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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,456	02/08/2002	David L. Dickerson	MI22-1943	9958
21567	7590	04/24/2006	EXAMINER	
WELLS ST. JOHN P.S. 601 W. FIRST AVENUE, SUITE 1300 SPOKANE, WA 99201			MAI, ANH D	
			ART UNIT	PAPER NUMBER

2814

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

21

<b>Notice of Abandonment</b>	Application No.	Applicant(s)	
	10/071,456	DICKERSON ET AL.	
	Examiner	Art Unit	
	Anh D. Mai	2814	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 29 July 2005.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☒ A proposed reply was received on 29 August 2005, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
 (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
 The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

See the Detailed Action

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

## **DETAILED ACTION**

### ***Status of the Claims***

1. Amendments filed July 14 and August 29, 2005 include: all new claims 82-99 directed to method of making, were added and the elected invention, semiconductor apparatus, claims 69-81 have been cancelled.

### ***Time line***

2. On the filling date February 09, 2002, a Preliminary Amendment was entered canceling claim 1-48 and adding new claims 49-68, directed to semiconductor apparatus, original presentation.

3. In a Restriction Requirement dated June 14, 2002, the pending claims 49-68 have been restricted for claims directed to three distinct species, species A claims 49-54, species B claims 55-61 and species C claims 62-68.

4. In the Election dated July 30, 2002, Applicants elected without traverse the species A, claims 49-54.

5. Subsequently, species A, claims 49-54 have been rejected and were replaced with claims 68-81.

6. Species A, claims 68-81 were finally rejected in March 14, 2005.

7. On July 14, 2005, in response to the Final Rejection dated March 14, 2005, Applicants cancelled all claims directed to apparatus and submitted all new claims 82-99 directed method of making.

8. In July 29, 2005, the Office issues a Notice of Non-responsive Amendment.

9. In August 29, 2005, Applicants amended the specification from being a “continuation” of application 09/146,838 to “divisional” of the same. Applicants pretend that such action has rendered the Non-responsive Notice moot.

10. In a subsequent telephone conversation with Mr. D. Brent Kenady, Reg. No. 40,045, this Examiner has fully explained the Office’s position regarding shifting of the claimed invention. MPEP 819 and 821.03.

However, Applicant’s representative still insisted that the ground for Non-Responsive has not been given and by changing from “continuation” to “divisional”, the Notice of Non-responsive Amendment is moot.

#### *Amendment*

11. Newly submitted claims 82-99 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 82-99 are directed to non-elected invention, method of making.

Since applicant has received actions on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 82-99 have been withdrawn from consideration, as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

12. The amendment filed on July 14, 2005 canceling all claims drawn to the elected invention, apparatus, and presenting only claims drawn to a non-elected invention, method of making, is non-responsive (MPEP 821.03). The remaining claims 82-99 are not readable on the

Art Unit: 2814

elected invention because: the originally submitted claims are directed to a distinct invention, semiconductor apparatus.

The Applicants were given a proper Notice of Non-Responsive Amendment and the explanation of the Office's position regarding shifting of invention during the prosecution. But the Applicants still insist that his action is fully responsive to the Notice and do not appear to advance the application to the final resolution.

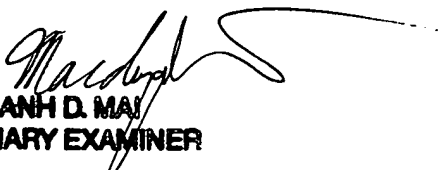
The Applicants' action is deem as intentional abandon the application.

*The application is hereby abandoned.*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anh D. Mai whose telephone number is (571) 272-1710. The examiner can normally be reached on 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wael Fahmy can be reached on (571) 272-1705. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**ANH D. MAI**  
**PRIMARY EXAMINER**